

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JOHN M. GARDNER and SUSAN L.  
GARDNER, husband and wife; and  
MT. HOOD POLARIS, INC., an Oregon  
corporation,

05-CV-769-HU

ORDER

Plaintiffs,

v.

TOM MARTINO, dba *THE TOM MARTINO  
SHOW*; WESTWOOD ONE, INC., a  
Delaware corporation; and CLEAR  
CHANNEL COMMUNICATIONS, INC., a  
Texas corporation.

Defendants.

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Attorney for Plaintiffs

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**BROWN, Judge.**

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#42) on September 19, 2005, in which he recommended the Court grant Defendants' Special Motion to Strike (Anti-SLAPP Motion Under ORS 31.150) (#9). Plaintiffs filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). Because the objecting party did not arrange for the transcription of the record pursuant to Fed. R. Civ. P. 72(b) nor did any party protest the lack of a transcript, the Court did not review a transcript or tape recording of the proceedings before the Magistrate Judge as part of the Court's *de novo* review. *See Spaulding v. Univ. of Wash.*, 686 F.2d 1232, 1235 (9<sup>th</sup> Cir. 1982).

This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

In their Objections to the Findings and Recommendation, Plaintiffs request leave to amend their Complaint. Plaintiffs, however, do not explain how they would change their pleading to remedy the defects addressed by the Magistrate Judge. Moreover, Plaintiffs have not filed a Motion for Leave to Amend nor have they produced a proposed amended pleading as required by LR 15.1. On this record, therefore, the Court declines to grant Plaintiffs' request for leave to amend.

Plaintiffs, however, correctly point out that a dismissal pursuant to Or. Rev. Stat. § 31.150 must be without prejudice. Accordingly, the Court dismisses Plaintiffs' action without prejudice.

#### **CONCLUSION**

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#42). Accordingly, the Court **GRANTS** Defendants' Special Motion to Strike (#9) and **DISMISSES** this action **without prejudice**.

IT IS SO ORDERED.

DATED this 13<sup>th</sup> day of December, 2005.



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ANNA J. BROWN  
United States District Judge